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IN THE

Supreme Court of the United States

October Term, 1966

No. 87

JULIAN BOND, DR. MARTIN LUTHER KING, JR., AND MRS. AREL KEYES,

Appellants

v.

JAMES "SLOPPY" FLOYD, ET AL.,

Appellees

On Appeal from the United States District Court For the Northern District of Georgia (Atlanta Division)

BRIEF FOR THE APPELLEES

QUESTIONS PRESENTED

Whether a legislative body in judging a member's constitutional qualification for public office has violated that member's constitutional right of free speech and whether such an adjudication can be an ex post facto law or a bill of attainder. An additional question is presented with respect to the constitutional rights of the electorate as to their right to vote and to a republican form of government in cases where the elected official is judged to lack qualification for office.

STATEMENT OF THE CASE

This case involves an adjudication by the Georgia House of Representatives concerning the qualifications of Mr. Julian Bond, one of its elected members. The facts which are pertinent to the questions before the Supreme Court are stated in chronological sequence.

A. The Election of Julian Bond.

Mr. Julian Bond was elected to the House of Representatives of the General Assembly of Georgia to fill a new seat created as a result of the reapportionment decision in *Toombs* v. *Fortson,* 241 F. Supp. 65 (N.D. Ga. 1965).

Mrs. Arel Keyes was, at all times material to these issues, a resident and qualified voter in Georgia House District 136, the newly created House District. (R. 104).

Dr. Martin Luther King, Jr., was not a registered voter in House District 136 (R. 104), but was registered to vote in another district, where he presumably voted. (R. 120.)

Mr. Bond was duly elected to the office by the voters of his district (R. 105), and no question is presented with respect to the vote count or with respect to any person's access to the ballot box. The registered voters were permitted to vote freely; a majority voted for Mr. Bond. (Stipulation ¶6, R. 103, 105.)

B. Mr. Bond's Endorsement of the January 6, 1966, Statement by "The Student Nonviolent Coordinating Committee."

Mr. Bond was, at all times material to these issues, Communications Director of the Student Non Violent Coordinating Committee, an organization active in the

civil rights field. This organization made, on January 6, 1966, a statement concerning this country's participation in the war in Viet Nam. That statement received wide publicity and is as follows:

"The Student Nonviolent Coordinating Committee has a right and a responsibility to dissent with United States foreign policy on an issue when it sees fit. The Student Nonviolent Coordinating Committee now states its opposition to United States' involvement in Viet Nam on these grounds:

"We believe the United States government has been deceptive in its claims of concern for freedom of the Vietnamese people, just as the government has been deceptive in claiming concern for the freedom of colored people in such other countries as the Dominican Republic, the Congo, South Africa, Rhodesia and in the United States itself.

"We, the Student Nonviolent Coordinating Committee, have been involved in the black people's struggle for liberation and self-determination in this country for the past five years. Our work, particularly in the South, has taught us that the United States government has never guaranteed the freedom of oppressed citizens, and is not yet truly determined to end the rule of terror and oppression within its own borders.

"We ourselves have often been victims of violence and confinement executed by United States government officials. We recall the numerous persons who have been murdered in the South because of their efforts to secure their civil and human rights, and whose murderers have been allowed to escape penalty for their crimes.

"The murder of Samuel Young in Tuskegee, Ala., is no different than the murder of peasants in Viet Nam, for both Young and the Vietnamese sought, and are seeking, to secure the rights guaranteed them by law. In each case the United States government bears a great part of the responsibility for these deaths.

"Samuel Young was murdered because United States law is not being enforced. Vietnamese are murdered because the United States is pursuing an aggressive policy in violation of international law. The United States is no respecter of persons or law when such persons or laws run counter to its needs and desires.

"We recall the indifference, suspicion and outright hostility with which our reports of violence have been met in the past by government officials.

"We know that for the most part, elections in this country, in the North as well as in the South, are not free. We have seen that the 1965 Voting Rights Act and the 1964 Civil Rights Act have not yet been implemented with full federal power and sincerity.

"We question, then, the ability and even the desire of the United States government to guarantee free elections abroad. We maintain that our country's cry of 'preserve freedom in the world' is a hypocritical mask behind which it squashes liberation movements which are not bound, and refuse to be bound, by the expediencies of the United States cold war policies.

"We are in sympathy with, and support, the men

in this country who are unwilling to respond to a military draft which would compel them to contribute their lives to United States aggression in Viet Nam in the name of the 'freedom' we find so false in this country.

"We recoil with horror at the inconsistency of a supposedly 'free' society where responsibility to freedom is equated with the responsibility to lend oneself to military aggression. We take note of the fact that 16 percent of the draftees from this country are Negroes called on to stifle the liberation of Viet Nam, to preserve a 'democracy' which does not exist for them at home.

"We ask, where is the draft for the freedom fight in the United States?

"We therefore encourage those Americans who prefer to use their energy in building democratic forms within this country. We believe that work in the civil rights movement and with other human relations organizations is a valid alternative to the draft. We urge all Americans to seek this alternative, knowing full well that it may cost them lives — as painfully as in Viet Nam." (R. 135.)

Mr. Bond endorsed the above statement and stated with respect to his endorsement:

"Why, I endorse it, first, because I like to think of myself as a pacifist and one who opposes that war and any other war and eager and anxious to encourage people not to participate in it for any reason that they choose; and secondly, I agree with this statement because of the reason set forth in it — because I think it is sorta hypocritical for us to

maintain that we are fighting for liberty in other places and we are not guaranteeing liberty to citizens inside the continental United States." (R. 138.)

Mr. Bond added that he admired the courage of persons who burned their draft cards; that he was a pacifist who was eager and anxious to encourage people not to participate in the war in Viet Nam for any reason that they might choose; and said that as a second class citizen he did not feel that he should be required to support the war in Viet Nam. Mr. Bond also said that he did not know whether he would commit treason, that he did not know if he was strong enough to put himself in a position where he would be guilty of treason. (R. 112.)

C. The Adjudication by the Georgia House of Representatives with Respect to Mr. Bond's Qualifications.

On the first day of the House session, at which time Mr. Bond and other members of the House were to take the oath of office, Mr. Bond was asked to step aside because challenges to his qualifications had been filed. After the other members were sworn, petitions protesting the seating of Representative-Elect Bond were referred by the Speaker of the House to a special committee designated to hear the contest. Mr. Bond was represented by counsel at the hearing and testified. He reaffirmed his adherence to all of his statements and stated that they were still his views. There was no evidence that Mr. Bond had receded in any way from his views. (R. 36-44.)

One of the challenges was based on the theory that Mr. Bond's views were at odds with the oath of office

required of a State Legislator and he was not qualified as such. (R. 13.) The committee, after hearing, recommended that he not be seated. (R. 26.) This recommendation was accepted by the House and he was denied his seat by a vote of one hundred eighty-four to twelve. (R. 99.)

The Appellants in their notice of appeal raised questions of procedural due process of law with respect to the action by the House of Representatives and the special committee. (Notice of Appeal ¶H, R. 180, 183.) However, as no question is thus presented in their brief, we presume that those questions have been abandoned.

D. Federal Court Review of the Judgment of the Qualifications of Mr. Bond Made by the Georgia House of Representatives.

The Georgia House of Representatives judged the qualifications of Mr. Bond and found against him. (R. 99.)

Mr. Bond filed suit in the Federal District Court for the Northern District of Georgia. Mrs. Arel Keyes, a resident and qualified voter in House District 136 joined with Mr. Bond as a party plaintiff, as did Dr. Martin Luther King, Jr. (R. 1.)

A three-judge court was convened under 28 U.S.C. §2281, for the trial of the issues. (R. 100.)

A motion to strike Mrs. Keyes and Dr. King as parties plaintiff for lack of standing was made (R. 102) and a motion to dismiss for lack of jurisdiction was made. (R. 121.)

The Defendants answered the complaint (R. 125) and the parties filed stipulations of fact. (R. 103.)

The full court found that it had jurisdiction over the subject matter of the complaint. (R. 179, 180.)

A majority of the court was of the opinion that neither Mrs. Keyes nor Dr. King had such a direct interest in the litigation as would give them standing to bring the complaint. (R. 179.)

The majority held with respect to the merits of the case, that there was sufficient evidence before the Georgia House to support a finding that Mr. Bond did not possess qualifications and the complaint was dismissed. (R. 133, 141.)

Chief Judge Tuttle dissented (R. 154), basing his opinion on a construction of the Georgia Constitution with respect to the question of qualifications. The qualifications must, according to the dissenting opinion, be set out in the State Constitution (R. 166, 167), and there was no evidence that Mr. Bond lacked any of the qualifications required by the Georgia Constitution.

Mr. Julian Bond, Dr. Martin Luther King, Jr., and Mrs. Arel Keyes have appealed the judgment. (R. 180.)

SUMMARY OF ARGUMENT

I. Historically courts have refused to assume jurisdiction in cases involving the determination of qualifications of members of legislative bodies. This Court has never asserted such jurisdiction. Even if jurisdiction might exist under certain circumstances, this Court has stated that controversies concerning the seating of state officials do not ordinarily produce substantial federal questions. *Wilson* v. *North Carolina,* 169 U.S. 586, 18 S. Ct. 435, 42 L. Ed. 865 (1898).

Cases involving the qualification of legislative officials present political questions which are not justiciable, as the challenge of the qualifications of a legislator does not involve the basic political organization of a state. *Baker* v. *Carr,* 369 U.S. 186, 231, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962).

II. The people of the United States require that the legislators, both of the United States and of the several states, shall be bound to support the Constitution of the United States, Article VI, Clause 3, U. S. Constitution.

Only the Georgia House of Representatives has the constitutional power to judge the qualifications of an individual member, even though some of those qualifications be set forth in the Constitution of the United States.

The qualification required of state legislators by the United States Constitution is neither unclear nor unreasonable, and the requirement of minimal loyalty to the government is worth the price of whatever deprivation of individual freedom involved.

Mr. Bond was measured by qualifications set forth in both the United States and Georgia Constitutions, and not by any new ones created for the occasion.

III. The First Amendment to the United States Constitution cannot be considered in a vacuum, but must be considered in relation to, and as a part of, a theory of government designed to insure the right of the people to govern themselves.

Mr. Bond's speech was a call to action at odds with the premises of orderly democratic government, and as such was not protected by the First Amendment. Mr. Bond's

election placed him in the role of a servant of the people, who are the governors in our political society under the Constitution. As an agent of the people, Mr. Bond was required to possess certain qualifications set forth in the organic law of the nation. The Georgia House found that he did not possess these qualifications.

Mr. Bond was not the citizen-critic of *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964), but rather was an official required specifically to uphold and support the Constitution and laws of the United States and of the State of Georgia.

A requirement of similar qualifications for other governmental employees has never been questioned by this Court. *Baggett* v. *Bullitt,* 377 U.S. 360, 379, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964). Indeed, the requirement of loyal state and federal legislators is as essential to a preservation of the right of the people to govern as is the right of citizens to comment upon public issues.

IV. The federal courts, should they assert jurisdiction in cases such as this, should only review the adjudications by legislative bodies to determine whether or not the standards of due process of law are met. In matters involving political questions not related to the basic political organization of the states, this Court should only require that a rational basis exist to support the actions of the legislative branch of government. Mr. Bond's statements, under the circumstances, constituted a rational basis upon which the fact-finding body could conclude that he did not possess the qualifications demanded.

V. The action of the Georgia Legislature did not constitute a Bill of Attainder or an ex post facto law, as it

was a judicial act specifically authorized by the Constitution and not a legislative undertaking.

VI. The case at bar does not involve any discrimination based on race, creed or color. Such a claim on behalf of Mr. Bond or his constituents is without foundation in fact. Neither Dr. King nor Mrs. Keyes has standing to challenge the action of the Georgia House of Representatives, as they have not shown any direct injury. A temporary lack of representation does not deprive voters of a republican form of government. *Barry* v. *U. S.*, 279 U.S. 597, 616, 49 S. Ct. 452, 73 L. Ed. 867 (1929).

ARGUMENT

I. A Complaint Based Upon An Adjudication by a Legislative Body of the Qualifications of One of Its Members Presents No Justiciable Issue and Should Be Dismissed for Lack of Jurisdiction.

The determination of the qualifications of members of legislative bodies has historically been entrusted to the legislative body. Note, the Right of Congress to Exclude its Members, 33 Va. L. Rev. 322 (1947). The proposition that legislative bodies be the sole judge of the qualifications of their members is a part of the law of the United States and of every member state. *Lucas* v. *McAfee,* 217 Ind. 534, 29 N.E. 2d 403, 405 (1940).

Georgia provides in her Constitution, Art. III, §VII, Par. I:

> "Each House shall be the judge of the election, returns and qualifications of its members . . . ." (Ga. Code Ann. §2-1901.)

Generally it has been held that a question of a member's qualifications cannot be determined by the judiciary, but such determination is solely and exclusively within the jurisdiction of the legislative body. 1 Cooley, *Constitutional Limitations,* pp. 270-71; 16 C.J.S. *Constitutional Law,* §152; 16 Am. Jur. 2d *Constitutional Law* §226; Annot. 107 A.L.R. 205 (1937).

State courts have generally held that they are wholly without jurisdiction in such cases even where the legislative action is arbitrary and violative of fundamental rights of the individual whose qualifications are challenged. See e.g., *Reif* v. *Barrett,* 355 Ill. 104, 188 N.E. 889, 898-900 (1933). This view is adhered to by the Supreme Court of Georgia in connection with the adju-

dication of qualifications of the members of the Senate and House of Representatives of this State. *Beatty* v. *Myrick,* 218 Ga. 629, 129 S.E. 2d 764 (1963); *Rainey* v. *Taylor,* 166 Ga. 476, 143 S.E. 383 (1928).

The same legal principle has always been thought to prevail on the federal level. The United States Constitution contains language almost identical to that of the Georgia Constitution and provides in Article I, Section 5, Paragraph I:

> "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, ..."

This Court has clearly indicated that the power of Congress in such matters is plenary and not subject to judicial review. See *Barry* v. *United States,* 279 U.S. 597, 613, 619, 49 S. Ct. 452, 73 L. Ed. 867 (1929), in which the United States Senate was referred to as the "sole authority" under the Constitution to judge the elections, returns and qualifications of its members.

It is significant that neither this Court, nor any lower federal court, prior to the case at bar, has ever asserted jurisdiction in a case involving the determination or adjudication of qualifications of state or federal legislators. The historical implication would seem to be that there is no such jurisdiction.

Appellees fully recognize that the horizontal application of the separation of powers principle to preclude judicial review by state courts of the state constitutional prerogative of a state legislature, and by federal courts of the federal constitutional prerogative of the two houses of Congress, may not be wholly determinative of questions of jurisdiction and justiciability where plain-

tiffs seek to test the action of a *state* legislature under federal constitutional standards (i.e., a vertical application) in seating controversies. Appellees would not maintain, in light of *Gomillion* v. *Lightfoot,* 364 U.S. 339, 81 S. Ct. 125, 5 L. Ed. 2d 110 (1960), that a state legislature could systematically exclude all Negroes without interference by a federal judiciary charged with the duty of protecting constitutional rights of all citizens.

On the other hand this Court has long since pointed out that controversies about the seating of state officials do not ordinarily produce the substantial federal question which is required to vest federal courts with jurisdiction. In *Wilson* v. *North Carolina,* 169 U.S. 586, 593, 18 S. Ct. 435, 42 L. Ed. 865 (1898), where a state official had been suspended from his office by the Governor without opportunity to see the evidence against him, to confront his accusers and cross-examine witnesses (all of which was alleged to be in denial of his rights under the Fourteenth Amendment), this Court, in refusing to interfere, stated:

> "The procedure was in accordance with the constitution and laws of the State. It was taken under a valid statute creating a state office in a constitutional manner, as the state court has held. What kind and how much of a hearing the officer should have before suspension by the Governor was a matter for the legislature to determine, having regard to the constitution of the State. The procedure provided by a valid state law for the purpose of changing the incumbent of a state office will not in general involve any question for review by this court. A law of that kind does but provide for the carrying out and enforcement of the policy of a state

> with reference to its political and internal administration . . . . The facts would have to be most rare and exceptional which would give rise in a case of this nature to a Federal question."

This Court's refusal to entertain Fourteenth Amendment claims respecting the seating and unseating of state officials was subsequently reaffirmed in *Taylor and Marshall* v. *Beckham,* 178 U.S. 548, 20 S. Ct. 890, 44 L. Ed. 1187 (1900); *Elder* v. *Colorado,* 204 U.S. 85, 27 S. Ct. 223, 51 L. Ed. 381 (1907); and *Walton* v. *House of Representatives of the State of Oklahoma,* 265 U.S. 487, 44 S. Ct. 628, 68 L. Ed. 1115 (1924).

The most recent decision of this Court which would appear to have a direct bearing on the question of an individual's right to be seated in a state legislature is *Snowden* v. *Hughes,* 321 U.S. 1, 64 S. Ct. 397, 88 L. Ed. 497 (1944). There the complaint alleged that the State Primary Canvassing Board, in violating state laws through willful refusal to correctly certify the results of a primary election, had also deprived petitioner of rights secured to him under both the "privileges and immunities" and "equal protection" clauses of the Fourteenth Amendment. In holding that the complaint failed to state a cause of action, this Court stated, at p. 6-7:

> "The protection extended to citizens of the United States by the privileges and immunities clause includes those rights and privileges which, under the laws and Constitution of the United States, are incident to citizenship of the United States, but does not include rights pertaining to state citizenship and derived solely from the relationship of the citizen and his state established by state law . . . . The right to become a candidate for

state office, like the right to vote for the election of state officers . . . is a right or privilege of state citizenship, not of national citizenship which alone is protected by the privileges and immunities clause.

"More than forty years ago this Court determined that an unlawful denial by state action of a right to state political office is not a denial of a right of property or of liberty secured by the due process clause. *Taylor & Marshall* v. *Beckham,* 178 U.S. 548. Only once since has this Court had occasion to consider the question and it then reaffirmed that conclusion, *Cave* v. *Newell,* 246 U.S. 650, as we reaffirm it now."

The "equal protection" contentions were similarly rejected and the Court concluded:

"[I]t is not without significance that we are not cited to and have been unable to find a single instance in which this Court has entertained the notion that an unlawful denial by state authority of the right to state office is without more a denial of any right secured by the Fourteenth Amendment." (*Id.* at p. 12.)

It may be asked whether the foregoing line of decisions has been superseded by *Baker* v. *Carr,* 369 U.S. 186, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962). We think not. In *Baker* v. *Carr* this Court expressly referred to such prior decisions, and while obviously presented with the opportunity to repudiate the rationale which they express, refrained from doing so. The Court instead distinguished those decisions, explaining that they did not go so far as to limit the jurisdiction of federal courts to inquire into matters of the basic governmental organi-

zation of the states (e.g., the apportionment of state legislatures). *Id.* at 231.

The challenge and determination of the qualifications of an individual legislator, however, for deficiencies in qualifications peculiar to him, is obviously not a question involving the basic political organization of a state. Therefore, the continuing vitality of such cases insofar as the qualifications, seating, and unseating of state officials is concerned has not been diminished by *Baker* v. *Carr.*

Moving from the above review of the past refusals of this and all other courts to substitute their judgment for the determination of a legislative body in controversies over the seating or unseating of a particular legislator, the precise question of whether this Court should now, for the first time, abandon this long standing policy and review the action of the House of Representatives of Georgia in the case at bar must be considered. It may be observed at the outset that this Court has pointed to two "dominant" criteria which should be considered in determining whether an issue falls into that category of political matters from which the federal courts may properly abstain on the ground that, notwithstanding the presence of jurisdiction, the question presented is essentially nonjusticiable. These two primary considerations are (1) the propriety of attributing finality to the action of the political body, and (2) the lack of satisfactory criteria for making a judicial determination. *Baker* v. *Carr,* 369 U.S. 186, 210, 82 S. Ct. 691, 7 L. Ed. 2d 663 (1962); *Coleman* v. *Miller,* 307 U.S. 433, 454-55, 59 S. Ct. 972, 83 L. Ed. 1385 (1939). Appellees respectfully urge the Court that in the instant situation the impossibility of satisfying both of these dominant criteria,

along with other sound policy reasons, suggests that the more appropriate course of action for this Court would be to dismiss the appeal for failure to present a justiciable question.

Looking first to the criterion of the appropriateness of attributing finality to the action of the legislature, it would seem self-evident that the efficient operation of a legislative body makes it highly desirable that it have the power of self-protection (which the constitution of every state and the federal government have sought to vest in such political bodies to determine the election, returns, and qualifications of its members). See e.g., *Re Chapman,* 166 U.S. 661, 668, 17 S. Ct. 677, 41 L. Ed. 1154 (1897); Story, *Comm. on the Const.,* Vol. II §831 p. 294.

As pointed out by the Court of Appeals of Kentucky *in Raney* v. *Stovall* (Ky.), 361 S.W. 2d 518, 523 (1962):

> "If the qualifications of members (of the state legislature) were subject to litigation in the courts, particularly during a session and particularly in view of the unavoidable judicial delay, the conduct of the public business would be completely disrupted."

The second criterion utilized by this Court, lack of satisfactory criteria for making a judicial determination, would also seem to indicate the propriety of judicial abstention. The question of whether or not an individual is qualified to be seated as a member of the Georgia House of Representatives involves a determination by the House which is largely of a factual nature. See e.g., *Hiss* v. *Bartlett,* 3 Gray 468, 63 Am. Dec. 768 (1855). The determination is a consensus of the indi-

vidual judgments of all of the members of the House, and it may be respectfully suggested that for the Courts to inquire into the mind of each and every legislator to determine whether his vote was based upon adequate and proper criteria would be no mean task.

Finally, Appellees urge that regard for the federal system and separation-of-powers concept is also an important policy reason supporting judicial abstention on the ground of nonjusticiability. The terminology employed by this Court would seem to clearly indicate that the two criteria specified are not exclusive and that in any given situation other sound policy reasons might appear which would authorize the federal judiciary to abstain on the ground of nonjusticiability. The long history of the doctrine that legislative bodies possess exclusive power to determine the elections, returns, and qualifications of their own members along with the universal conclusion of the courts that this adjudication of the legislative branch of government ought not to be interfered with by the judiciary, has already been noted. To paraphrase the language of this Court in *Snowden* v. *Hughes,* 321 U.S. 1, 12, 64 S. Ct. 397, 88 L. Ed. 497 (1944), it is not without significance that from the very start until the present time we are unable to find a single instance where the federal courts have required the seating in any legislative body, state or federal, of an individual determined by such body to be unqualified to be seated therein, who has been expelled by the legislative body, or who was determined by the legislature to have been the loser in a contested election.

As to the fear that a policy of judicial abstention might lead to abuse, we think the best answer is that given by the Supreme Court of California in *French* v.

Senate of State of California, 146 Cal. 604, 80 P. 1031, 1034 (1905), when it said:

> "With respect to the possible abuse of such power, the case is analogous to that of the President of the United States with respect to officers of the United States subject to arbitrary removal by him. In regard to this the Supreme Court of the United States says that the only restraint upon the abuse of the power 'must consist in the responsibility of the President, under his oath of office, to act as shall be for the general benefit and welfare.' Shurtleff v. U. S., 189 U.S. 317, 23 Sup. Ct. 535, 47 L. Ed. 828. The same is true of the power of the Senate here under consideration. The oath of each individual member of the Senate, and his duty under it to act conscientiously for the general good, is the only safeguard to the fellow members against an unjust and causeless expulsion. This is the only practical rule that can be adopted as to those unrestricted governmental powers which are necessary to the exercise of governmental functions, and which must be lodged somewhere. Each department of the state is necessarily vested with some power which is beyond the supervision of any other department, and in such cases the only protection against abuse is the conscience of the individual in whom the power is vested."

Over sixty-five years ago this Court observed in *Taylor and Marshall* v. *Beckham,* 178 U.S. 548, 570-71, 20 S. Ct. 890, 44 L. Ed. 1187 (1900):

> "It is obviously essential to the independence of the states, and to their peace and tranquility, that their power to prescribe the qualifications of their

> own officers . . . should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States."

The policy of this nation, as declared by the President of the United States, is to encourage creative federalism,[1] and Appellees suggest that this is perhaps all the more reason for giving effect to federalism in connection with our newly reapportioned, and politically responsible, state legislature. The power of a state legislature to determine controversies respecting the seating or unseating of its own members, at least in the absence of some extraordinary and gross abuse which clearly and unambiguously violates a federally protected right (e.g., a clear showing of a purposeful and systematic exclusion on the ground of race, color or religion, or the showing of a continued pattern of some other abuse of which no other possible remedy appears, such as a malapportioned legislature) should be preserved. Inasmuch as no such extraordinary circumstance is present in the instant case, it is respectfully submitted that the legislative prerogative of the Georgia House of Representatives should be upheld and the appeal dismissed for want of a justiciable issue.

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[1]Speech made on May 22, 1964, at Ann Arbor, Michigan, in which the President set forth his concept of the Great Society, Congressional Quarterly Weekly Report, Vol. XXIV, Number 16, April 22, 1966, p. 833.

II. A Legislator Not Bound to Support the United States Constitution Lacks Requisite Qualifications for Public Office.

The Brief for the Appellants exhibits the fact that either they have unintentionally ignored the most important qualification which a member of a state legislature must possess, or they have deliberately attempted to divert this Court from the issue determined by the Georgia House of Representatives and the Court below.

As already pointed out, both federal and state Constitutions make the respective houses the judges of the qualifications of their members.

Article VI, Clause 3, of the United States Constitution requires the following qualifications for offices enumerated:

> "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution."

In addition, the Constitution of Georgia requires that each state legislator, before being seated, must take an oath to support the Constitution of Georgia and of the United States. *Article III, Section IV, Para. V, Constitution of Georgia.* These are the qualifications which were in question before the Georgia House of Representatives. (R. 13.) As summarized by the Court below:

> "Mr. Bond's right to speak and to dissent as a private citizen is subject to the limitation that he sought to assume membership in the House. As

> such he was required to take an oath to support the Constitution of the United States. This is a legitimate requirement. Indeed, the Federal Constitution requires it. Art. VI, § 3. One of the charges against him was that his statements were inconsistent with and repugnant to that oath. Was there any basis for this charge?" (R. 151.)

This legitimate qualification has been overlooked, whether intentionally or otherwise, by the Appellants.

Any discussion of a theory that a legislative body may not create new qualifications above and beyond those set forth by organic law for office may be intriguing, but it is certainly not relevant to the case at bar. The history of the Middlesex election case of John Wilkes is of great historical interest, but cannot be cited as authority for any legal position upon which the Appellants can rely.

The qualification which Mr. Bond lacked was the ability to support and uphold the Constitution and laws of the United States and of Georgia. The portion of the Georgia oath which the Appellants feel to be violative of the Due Process clause of the Fourteenth Amendment was never in issue before the Georgia House. They refer to that portion of the Georgia oath that states:

> ". . . on all questions and measures which may come before me, I will so conduct myself, as will, in my judgment, be most conducive to the interests and prosperity of this State . . ."

as a "promissory oath." Perhaps it is. But this general admonition to a legislator to perform his duties wisely and well was not the standard by which Mr. Bond was judged. It was decided that he lacked the ability to up-

hold and support the fundamental law of his nation and his state.

This qualification is required of state legislators by both the Federal and the State Constitutions. It is not vague or unclear or uncertain. It means precisely what it says, and it is significant that this Court has never considered language of this nature impermissibly vague. In *Baggett* v. *Bullitt,* 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964), the Court stated at page 379, that:

> ". . . We do not question the power of a State to take proper measures safeguarding the public service from disloyal conduct."

In this case, the Georgia House of Representatives was placed under a firm and solemn duty to judge whether or not Mr. Bond possessed the qualifications demanded of state legislators by both the Federal and State Constitutions. This duty, no doubt disagreeable to some, could not be avoided. The Georgia House faced and met its constitutional responsibilities. Even if by some exercise in constitutional semantics it could be contended that the requirements of the Georgia Constitution were void for vagueness or invalid for any other reason, the qualification for state and federal legislators prescribed by the United States Constitution cannot violate the Fourteenth Amendment, or any other concept of due process in the Constitution. The qualification appears in the body of the Constitution itself. *United States Constitution,* Article VI, Clause 3.

Article VI, Clause 2, of the United States Constitution provides that:

> "This Constitution . . . shall be the supreme Law of the Land . . ."

It was mandatory for the Georgia House of Representatives to determine whether or not the Appellant Bond possessed the qualifications required by the Constitution, after those qualifications were placed into question by protests duly filed. The Georgia Constitution makes each house the judge of the qualifications of its members. In addition to the qualifications of age and residency, the two Constitutions require an ability to uphold and support the Constitution and laws of the United States. Only the tribunal of the state given the power to judge qualification of legislators by the state constitution can perform this function. Obviously, neither Congress nor any other organ of the Federal Government can carry out this duty.

Therefore, there does exist at least one qualification, not appearing in the State Constitution, which the State Legislature of Georgia, by virtue of the power vested in it by the State Constitution, must adjudicate if the question is properly raised in respect to one of its member. A legislator not bound to support and uphold the Constitution and laws of the United States lacks the requisite qualifications for public office. In *American Communications Association* v. *Douds,* 339 U.S. 382, 70 S. Ct. 674, 94 L. Ed. 925 (1950), this Court commented on the particular qualification imposed by Article VI, Clause 3, of the Constitution, at page 415:

> "Obviously the Framers of the Constitution thought that the execution of an affirmation of minimal loyalty to the government was worth the price of whatever deprivation of individual freedom of conscience was involved."

This qualification of minimal loyalty for state legislators has never been questioned heretofore.

Mr. Bond indicated by his actions that he might be deficient in respect to the qualification mentioned above. After having heard the evidence, the House, pursuant to the mandate of the United States Constitution, determined that Mr. Bond did not possess the qualifications required by the supreme law of the land.

III. The Requirement of Loyal Legislators, Protected by Article VI of the United States Constitution, Like the First Amendment, Seeks the Protection of Democratic Processes for the People.

The citizens of Georgia have always cherished the liberty of speech and have from the early history of this state and country ought to protect this right. The Constitution of Georgia provides, Article I, Section 1, Paragraph XV:

> "No law shall ever be passed to curtail, or restrain the liberty of speech, or of the press; . . ." (Ga. Code Ann. §2-115).

The meaning of Freedom of Speech has in recent years been re-examined and the protection afforded has been restated.

The purpose of the First Amendment to the United States Constitution is the protection of our democratic processes, and thus of our government.

Mr. Harry Kalven, Jr., has summarized this idea, stating:

> "The amendment has a 'central meaning' — a core of protection of speech without which democracy cannot function, without which, in Madison's phrase, 'the censorial power' would be in the Government over the people and not 'in the people over

the Government.' " Kalven, *The New York Times Case: A Note on "The Central Meaning of the First Amendment."* 1964 *The Supreme Court Review,* p. 191, 208.

This Court stated in *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 270, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964) that speech concerning public affairs is the essence of self-government and that the First and Fourteenth Amendments embody our

> ". . . profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials."

This does not mean, however, that all utterances are to be protected absolutely. This Court said in *Garrison* v. *State of Louisiana,* 379 U.S. 64, 75, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964), that the use of a known lie is not to be protected.

Alexander Meiklejohn states at page 88 in *Political Freedom* (1960):

> "Under the Constitution, we are agreed together that we will be, by corporate action, self-governed. We are agreed that as free men, politically equal, we alone will make the laws and that, as loyal citizens, equal before the laws, *we will obey them.* That is our social compact — the source both of our freedoms and of our obligations." (Emphasis added.)

Professor Meiklejohn in 1953, testifying before a Senate Committee on Constitutional Rights, said:

". . . our First Amendment freedom forbids that any

citizen be required, under threat of penalty, to take an oath, or make an affirmation, as to beliefs which he holds or rejects. *Every citizen, it is true, may be required and should be required, to pledge loyalty, and to practice loyalty, to the nation. He must agree to support the Constitution.* But he may never be required to believe in the Constitution. His loyalty may never be tested on grounds of adherence to, or rejection of, any *belief.* Loyalty does not imply conformity of opinion. Every citizen of the United States has Constitutional authority to approve or to condemn any laws enacted by the Legislature, any actions taken by the Executive, any judgments rendered by the judiciary, any principles established by the Constitution. *All these enactments which, as men who are governed, we must obey,* are subject to our approval or disapproval, as we govern. With respect to all of them we, who are free men, are sovereign. We are 'The People.' We govern the United States." Hearing before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 84th Congress, 2nd Session at p. 17 (1955). (Emphasis added.)

The First Amendment does not embrace the right to advocate the violation of law by others. *Fox* v. *Washington,* 236 U.S. 273, 35 S. Ct. 383, 59 L. Ed. 573 (1915); *Cox* v. *Louisiana,* 379 U.S. 559, 85 S. Ct. 476, 13 L. Ed. 2d 487 (1965).

The Supreme Court stated in *Dennis* v. *United States,* 341 U.S. 494, 501, 71 S. Ct. 857, 95 L. Ed. 1137 (1951):

"Whatever theoretical merit there may be to the argument that there is a 'right' to rebellion against dictatorial governments is without force where the

existing structure of the government provides for peaceful and orderly change."

Mr. Bond said that he was eager and anxious to encourage people not to participate in the war in Viet Nam for any reason that they choose. (R. 138.) He said that he did not have a requirement to support that war. He refused to state whether or not he would commit treason. (R. 112.)

Judge Learned Hand in *Masses Publishing Co.* v. *Pattern,* 244 F. 535, 540 (S.D.N.Y. 1917), said:

> "One may not counsel or advise others to violate the law as it stands. Words are not only the keys of persuasion, but the triggers of action and those which have no purpose but to counsel the violation of law cannot by any latitude of interpretation be a part of that public opinion which is the final source of government in a democratic state." On appeal Judge Hand's decision was reversed: 246 F. 24 (2nd Cir. 1917).

Mr. Bond's call to action is at odds with the premises of democratic government. He seeks not the orderly democratic change of our draft laws but encourages the violation of our draft laws for any reasons.

The rule or test used in *Garrison* v. *Louisiana* is perhaps the strictest yet used by the courts. That case did involve a direct abridgment of speech, but even if the *Garrison* rule were to be used in this case, the facts clearly show that he has placed himself outside the area of its protection as a citizen. As a member-elect of a State legislature Mr. Bond not only placed himself beyond First Amendment protection, but also called forth the imposition of constitutionally-required sanctions.

The case at bar calls for an inquiry into the central meaning of the First Amendment, which has been so ably conducted by this Court in the recent cases of *New York Times* v. *Sullivan, supra; Garrison* v. *Louisiana, supra;* and *Rosenblatt* v. *Baer,* 383 U.S. 75, 15 L. Ed. 2d 597, 86 S. Ct. 669 (1966). Indeed, the fundamental right of the American people to govern themselves may depend upon the outcome of this case.

The First Amendment provides that:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

In recent years, by means of cases, discussions and various types of articles, the true meaning and function of the First Amendment in the area of public affairs has been rediscovered. One of the greatest influences in this process of defining the American System, as embodied in the Constitution of the United States and Amendments thereto, has been the teachings of Alexander Meiklejohn, a part of which were quoted above.[2] Dr. Meiklejohn asserted that the structure of government and society adopted by the framers did not merely reformulate the English system of parliamentary (governmental) powers and individual liberties, but rather introduced a unique, and revolutionary set of principles into political society.

> "Apart from the First Amendment itself, the passages of the Constitution which most directly

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[2]Brennan, The Supreme Court and the Meiklejohn Interpretation of the First Amendment, 79 Harv. L. Rev. 1 (1965).

"clarify its meaning are the Preamble, the Tenth Amendment, and Section 2 of Article I. All four provisions must be considered, in their historical setting, not only in relation to one another but, even more important, in relation to the intention and structure of the Constitution as a whole. Out of such consideration the following principles seem to emerge:

1. All constitutional authority to govern the people of the United States belongs to the people themselves, acting as members of a corporation body politic. They are, it is true, 'the governed.' But they are also 'the governors.' Political freedom is not the absence of government. It is self-government.

2. By means of the Constitution, the people establish subordinate agencies, such as the legislature, the executive, the judiciary, and delegate to each of them such specific and limited powers as are deemed necessary for the doing of its assigned governing. These agencies have no other powers.

3. The people do not delegate all their sovereign powers. The Tenth Amendment speaks of powers that are reserved 'to the people,' as well as of powers 'reserved to the States.'

4. Article I, § 2, speaks of a reserved power which the people have decided to exercise by their own direct activity: 'The House of Representatives shall be composed of members chosen every second year by the people of the several States. . . .' Here is established the voting power through which the people, as an electorate, actively participate in governing both themselves as subjects of the laws, and

their agencies, as the makers, administrators, and interpreters of the laws. In today's government, the scope of direct electoral action is wider than the provisions made when Article I, § 2, was adopted, but the constitutional principle or intention is the same.

5. The revolutionary intent of the First Amendment is, then, to deny to all subordinate agencies authority to abridge the freedom of the electoral power of the people.

For the understanding of these principles it is essential to keep clear the crucial difference between 'the rights' of the governed and 'the powers' of the governors. And at this point, the title 'Bill of Rights' is lamentably inaccurate as a designation of the first ten amendments. They are not a 'Bill of Rights' but a 'Bill of Powers and Rights.' The Second through the Ninth Amendments limit the powers of the subordinate agencies in order that due regard shall be paid to the private 'rights of the governed.' The First and Tenth Amendments protect the governing 'powers' of the people from abridgment by the agencies which are established as their servants. In the field of our 'rights,' each one of us can claim 'due process of law.' In the field of our governing 'powers,' the notion of 'due process' is irrelevant." Meiklejohn, *The First Amendment is an Absolute.* The Supreme Court Review, p. 245, 253 (1961).

The core of this theory was summarized precisely by Mr. Justice Brennan when he stated:[3]

[3]Brennan, The Supreme Court and the Meiklejohn Interpretation of the First Amendment, 79 Harv. L. Rev. I, II (1965).

> "The first amendment, in his [Meiklejohn's] view, is the repository of these self-governing powers that, because they are exclusively reserved to the people, are by force of that amendment immune from regulation by the agencies, federal and state, that are established as the people's servants."

It is submitted that this is the view of the First Amendment which this Court has made explicit in *New York Times Co.* v. *Sullivan, supra,* and cases following it.[4]

The *New York Times* case has been hailed as a significant step forward in the exposition of the meaning of Freedom of Speech and of the inner workings of our representative system of democracy. That case involved an action for libel brought by public officials of Alabama because of an allegedly defamatory advertisement appearing in the New York Times. The comments complained of were made by private citizens who criticized the conduct of public officials. The Court held that state laws governing libel actions brought by a public official against those criticizing his official conduct are limited by the safeguards of freedom of speech and press afforded by the First Amendment. In such cases, the Court said that the Constitution requires a showing of "actual malice" before an official can recover damages for defamation of him in his official capacity. Obviously the particular holding in *Times* is not specifically applicable to the case at bar, as this case does not involve comment by a private citizen upon government officials and the use of retaliatory civil actions by those officers. The facts in *Times* involved only the constitutional rights of the

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[4]Kalven, The New York Times Case: A Note on "The Central Meaning of the First Amendment." The Supreme Court Review, pp. 191, 213-218 (1964).

"citizen-critic of government." However, the principles expressed there and in *Garrison* illustrate that the action of the Georgia House was not only constitutionally authorized, but was in fact constitutionally demanded.

The principles were developed by the Court in *Times* in the following orderly fashion. First, the Court said:

> "The general proposition that freedom of expression upon public questions is secured by the First Amendment has long been settled by our decisions. The constitutional safeguard, as we have said, 'was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people.' *Roth* v. *United States,* 354 U.S. 476, 484, 1 L. Ed. 2d 1498, 1506, 77 S. Ct. 1304." 376 U.S. 269.

In discussing the Sedition Act of 1798, which did indeed evoke awareness of the meaning of Freedom of Speech, and its relation to, and designed effect on, government, the Court looked to the words of James Madison:

> "Madison prepared the Report in support of the protest. His premise was that the Constitution created a form of government under which 'the people, not the government, possess the absolute sovereignty.' The structure of the government dispersed power in reflection of the people's distrust of concentrated power, and of power itself at all levels." 376 U.S. 274.

Madison recognized that government is constituted of the agents of the people, and therefore the Constitution contained assurances, the First Amendment among them, designed to insure that the governors carried out the will

of the governed. This Court noted the relative positions of the people and the government when it said:

> "It is as much his [the citizen-critic] duty to criticize as it is the official's duty to administer." 376 U.S. 282.

The Constitution and laws of the United States are the result of the citizen's right and responsibility to govern; the official must be bound by that Constitution and those laws so that government does not subvert the governed. The desired end of citizen criticism and official responsibility is, as Mr. Justice Black pointed out in his concurring opinion, that government be responsive to the people and that changes be obtained by peaceful means, for that is the keystone of the constitutional government of the nation. 376 U.S. 301.

The case of *Garrison* v. *Louisiana* applied the rule from *Times* v. *Sullivan* to state prosecutions for criminal libel. *Garrison's* facts also involved no more than criticism of the conduct of particular governmental officials. In dealing with the use of calculated falsehoods, the Court set forth the suppositions and goals of our society as it is politically organized:

> "That speech is used as a tool for political ends does not automatically bring it under the protective mantle of the Constitution. For the use of the known lie as a tool is at once at odds with the premises of democratic government and with the orderly manner in which economic, social, or political change is to be effected." 379 U.S. 75.

Thus the Court stated that the calculated lie is one of the types of speech which is inconsistent with the ex-

pression of the will of the people as set forth in the organic law of the people, and therefore enjoys no constitutional protection.

Rosenblatt v. *Baer, supra,* is another recent case which called upon the Court to clarify what governmental employees would be subject to the rule in *Times.* The party involved was a supervisor of a county-owned recreation area who had been attacked verbally by a citizen-critic. In summarizing the meaning of *Times,* in order to show clearly the concepts of government of this country set forth in the Constitution, this Court issued a statement which is peculiarly relevant to the case at bar, and which heralds needed development of the other side of this constitutional coin:

> "The thrust of New York Times is that when interests in public discussion are particularly strong, as they were in that case, the Constitution limits the protections afforded by the law of defamation. Where a position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it, beyond the general public interest in the qualifications and performance of all government employees, both elements we identified in New York Times are present and the New York Times malice standards apply." 383 U.S. 75, 86, 86 S. Ct. 669, 15 L. Ed. 2d 605.

That case demonstrates the people have an overriding interest in at least two aspects of public officialdom; qualifications and performance. *New York Times, Garrison* and *Rosenblatt* v. *Baer* were cases dealing with citizen comment on the performance of public officials, but

it is clear from those cases that the people have an equally strong interest in the qualifications of public officials, and that interest must also be constitutionally protected. It is.

The Constitution of the United States, and laws validly enacted pursuant to that Constitution, are the methods by which the citizenry of the United States governs. As Prof. Meiklejohn has said, "they are expressions of our own corporate self-control."[5] In order to fully understand the checks in the Constitution which maintain control by the people, the electoral and governmental process must be considered as a whole. First, the power to elect their representatives is lodged in the people by the Constitution and by the guarantee of a Republican Form of Government, in the case of the states. Then, the right of citizen-criticism, elaborated upon in *Times,* gives a great measure of protection to the people. And, finally, at a future election, the people may pass judgment upon their servants. But, prior to these safeguards, and of much greater importance, is the requirement of qualifications.

Qualifications set forth in the Constitution, and in state constitutions, are not intended to be meaningless job requirements, no matter how trivial they may seem at first glance. A member of Congress, for example, must be twenty-five years of age and seven years a citizen of the United States. Article I, Section 2, Clause 2, Constitution of the United States. These qualifications have a definite purpose in our constitutional scheme, for the Framers had no special distaste for young men twenty-

[5]Meiklejohn, *Political Freedom,* p. 17.

four years of age.[6] The purpose of these qualifications is to insure that those elected are wise and mature, have a knowledge of their country's customs and traditions, and hopefully, a love of their nation. Constitutional qualifications are a fundamental expression of the people's will which has priority over passing electoral whims. A given constituency can elect a nineteen year old congressman who is a citizen of Liechtenstein. But he does not possess the requisite qualifications, and, if challenged, may not be seated. He can then be re-elected; but he still cannot be seated, in the absence of a constitutional amendment. In order to govern themselves, the people have set certain minimal standards which members of Congress and state legislators must meet.

Among these standards is the requirement that state legislators be bound to support and uphold the Constitution and laws of the United States. The function of this requirement can easily be ascertained from a study of the principles in *New York Times* and *Garrison*. Citizen-comment and the electoral power are of no avail if the representative, entrusted with the legislative power, is not bound to support and uphold the Constitution and laws over which he has been designated guardian.

The Appellant Bond in this case cannot place himself in the role of citizen-critic, for by virtue of his candidacy and election he became the servant of the citizenry. And, any argument based upon the Speech and Debate Clause (Art. I, Sect. 6, Cl. 1) of the United States Constitution

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[6]This allegation may be partially rebutted by the fact that, in debate at the Convention, Mr. Mason admitted that his own opinions at age twenty-one were "too crude and erroneous to merit an influence on public measures." Farrand, *Records*, I, p. 375 (June 22, 1787).

is not relevant, as Mr. Bond was challenged for lack of qualifications prior to being seated. A legislative house may use the power of expulsion if a member demonstrates on the floor a lack of qualifications. It may also determine the qualifications of a member-elect if a proper challenge is made prior to seating. Statements made by U. S. Senators are the business of the United States Senate. A lack of qualifications on Mr. Bond's part addressed itself to the Georgia House of Representatives.

It is not the position of Appellees that legislators do not have the right and the duty of participating in open and robust debate on public issues. This should be done both on the floor of the legislature and in the public forum, for this was one of the special privileges of Mr. Bond. The qualification of allegiance to the Constitution and laws of the United States, and, in this case, of the State of Georgia, was his special responsibility. This Court has on many occasions supported such a requirement of qualifications for other governmental employees. In *Baggett* v. *Bullitt,* 377 U.S. 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964), the Court stated, at page 379:

> ". . . We do not question the power of a State to take proper measures safeguarding the public service from disloyal conduct."

This Court approved a loyalty oath required by the State of Maryland which denied persons a place on the election ballot unless they make oath that they are not engaged in one way or another in the attempt to overthrow the government by force. *Gerende* v. *Board of Supervisors,* 341 U.S. 56, 71 S. Ct. 565, 95 L. Ed. 745 (1951).

The oath required by Article VI of the United States

Constitution was commented on by this Court in *American Communications Association* v. *Douds,* 339 U.S. 382, 415, 70 S. Ct. 674, 94 L. Ed. 925 (1950) in which this Court noted that the Framers approved a qualification of "minimal loyalty." In *Dennis* v. *United States* (1951), *supra,* the Court held that the purpose of an oath is to protect the legislative processes, not to punish belief.

Even if Mr. Bond's comments were within the area of First Amendment protection, an assumption we have shown to be without merit, the action by the Georgia House does not directly punish his protest and his call for direct defiance of law and order. The adjudication by the Georgia House with respect to his qualifications would be at most an indirect and partial discouragement.

A leading case involving indirect restraint, *American Communications Association* v. *Douds,* 339 U.S. 382, 70 S. Ct. 674, 94 L. Ed. 925 (1950), upheld Section 9 (h) of the Labor-Management Relations Act (Taft-Hartley) of 1947, which withheld the machinery of the NLRB from any labor union where any of its officers had failed to file a "Non-Communist" affidavit affirming nonmembership and nonadvocacy. Here, Congress was not regulating speech, *per se,* but conduct; i.e., political strikes in commerce, and the impingement upon First Amendment freedoms of speech and association was merely an incidental effect of the regulatory statute, in which Congress recognized the very substantial relationship between Communist control of a labor union and the substantive evil "political strikes." In this type case, the "balancing test" applies, for as stated by the Court:

> "When particular conduct is regulated in the interest of public order, and the regulation results in

an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under all the circumstances presented.

* * * *

"In essence, the problem is one of weighing the probable effects of the statute upon the free exercise of the right of speech and assembly against the congressional determination that political strikes are evils of conduct which cause substantial harm to interstate commerce and that Communists and others identified by §9 (h) post continuing threats to that public interest when in positions of union leadership. We must, therefore, undertake the 'delicate and difficult task . . . to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights.' *Schneider* v. *Irvington,* 308 U.S. 147, 161 (1939)." *American Communications Association* v. *Douds,* 339 U.S. 382, 399, 70 S. Ct. 674, 94 L. Ed. 925 (1950).

Another well-known indirect restraint is presented in the loyalty-oath cases, where the law seeks regulation not of speech, but of one's qualifications, and the impact upon speech and association is merely incidental to the state's objective of determining the qualifications of municipal employees. *Garner* v. *Board of Public Works of Los Angeles,* 341 U.S. 716, 71 S. Ct. 909, 95 L. Ed. 1317 (1951); public officers, *Gerende* v. *Board of Supervisors of Elections,* 341 U.S. 56, 71 S. Ct. 565, 95 L. Ed. 745 (1951); public school teachers, *Adler* v. *Board of Education of New York,* 342 U.S. 485, 72 S. Ct. 380, 96 L. Ed. 517 (1952); and lawyers, *Konigsberg* v. *State Bar*

of California, 366 U.S. 82, 81 S. Ct. 997, 6 L. Ed. 2d 105 (1961); *In re Anastaplo,* 366 U.S. 82, 81 S. Ct. 978, 6 L. Ed. 2d 135 (1961).

The *Konigsberg* case, *supra,* is particularly instructive, for it involved an undertaking by the state to ascertain a person's qualifications deemed relevant to protection of a legitimate state interest, and this objective, not the curtailment of speech itself, was the end in view. The pursuit of this objective incidentally affected Konigsberg's First Amendment freedoms, and hence the necessity of applying the "balancing test" arose. As stated by the Court:

> "Throughout its history this Court has consistently recognized at least two ways in which constitutionally protected freedom of speech is narrower than an unlimited license to talk. On the one hand, certain forms of speech, or speech in certain contexts, has been considered outside the scope of constitutional protection. (Citing cases.) On the other hand, general regulatory statutes, not intended to control the content of speech but incidentally limiting its unfettered exercise, have not been regarded as the type of law the First or Fourteenth Amendment forbade Congress or the States to pass, when they have been found justified by subordinating valid governmental interests, a prerequisite to constitutionality which has necessarily involved a weighing of the governmental interest involved. (Citing cases). It is in the latter class of cases that this Court has always placed rules compelling disclosure of prior association as an incident of the informed exercise of a valid governmental function. *Bates* v. *Little Rock,* 361 U.S. 516, 524, 4 L. Ed. 2d 480, 586,

80 S. Ct. 412. Whenever, in such a context, these constitutional protections are asserted against the exercise of valid governmental powers a reconciliation must be effected, and that perforce requires an appropriate weighing of the respective interests involved." *Konigsberg, supra,* at pp. 49, 50, 51.

The public interest involved in this case is the assurance of a loyal legislature as evidenced by the requirements set forth in both the United States Constitution and the Georgia Constitution. The people in governing themselves always hold a valid and necessary interest in self-preservation and in assuring the loyalty of public servants, particularly in high public office. The qualifications of persons in such positions of responsibility is of prime importance, if we are to maintain a government of the people. Without a loyal legislature dedicated to democratic and orderly processes, our democracy cannot function. All citizens of this country and the residents of every State have an interest in the protection of orderly democratic processes. This need is greater than an issue of local or state concern. It is of national importance.

IV. The Adjudication by the House of Mr. Bond's Lack of Qualifications Did Not Violate Substantive Due Process Standards.

Having established that Mr. Bond, as a state legislator, must meet the qualifications set forth in both the federal and state constitutions, and that the Georgia House had the duty of determining those qualifications, it is then necessary to ascertain what standard of review the federal courts should utilize in reviewing the proceedings, assuming that this case presents a justiciable controversy. It is submitted that the standard assumed by the Court below was the correct one.

The trial court in this case held that the review of the controversy should be based upon the principle of separation of powers and on our system of federalism. This standard is particularly appropriate in view of the fact that the Georgia House of Representatives was reapportioned prior to Mr. Bond's election, and that reapportionment was recently upheld by this Court in *Toombs* v. *Fortson,* 384 U.S. 210, 86 S. Ct. 1464, 16 L. Ed. 2d 482 (1966). Perhaps the greatest impact of the reapportionment cases was that they resulted in the strengthening of state government, giving new validity to our federal system of government.

Therefore, this Court is only called upon to determine whether or not the standard employed by the lower court was proper in reviewing the determination of qualifications by a proper representative body of the legislative branch of government. In commenting on the necessity of fair apportionment, this Court said, in *Reynolds* v. *Sims,* 377 U.S. 533, 565, 84 S. Ct. 1362, 12 L. Ed. 2d 506 (1964):

"Modern and viable state government needs, and the Constitution demands, no less."

The Constitution demands responsible state government. Once it is established, it must be allowed to act in a responsible manner, if there is a rational basis for its actions.

The Court below, after reviewing a number of cases, felt that it should practice restraint in cases involving political questions relating to a particular office, as opposed to those involving the entire system of state government. The Appellees earnestly hope that this Court will agree that the case at bar should be resolved by striking a balance between the principle of separation of powers, the federal system and individual constitutional rights. The result is an inquiry as to whether or not Mr. Bond has been denied due process of law in violation of the Fourteenth Amendment.

The determination of qualifications has been attacked as arbitrary action by the Appellants. They have charged that Mr. Bond was denied a seat on the basis of "insufficient evidence."

The determination of the House cannot be reversed on the ground of "insufficient evidence." The federal courts are not and should not be courts of general review of all actions taken by state legislatures. The courts should only review this matter to determine if basic constitutional standards have been met. This Court, in *Garner* v. *Louisiana,* 368 U.S. 157, 82 S. Ct. 248, 7 L. Ed. 2d 207 (1961), stated that:

"As in Thompson v. Louisville (US) *supra,* our inquiry does not turn on a question of sufficiency of

> evidence to support a conviction, but on whether these convictions rest upon any evidence which would support a finding that the petitioners' acts caused a disturbance of the peace." *Garner* v. *Louisiana, supra,* at p. 163.

In *Thompson* v. *Louisville,* 362 U.S. 199, 80 S. Ct. 624, 4 L. Ed. 2d 654 (1960), the plaintiff was charged with the offense of loitering and disorderly conduct. A city ordinance prohibiting loitering required that three elements be proved:

(1) That the person be without visible means of support, or be unable to give a satisfactory account of himself;

(2) That the person be found sleeping, lying, or trespassing in or about any premises;

(3) Without first having the consent of the owner or manager.

The record showed conclusively that petitioner was able to give a proper account of himself, was merely patting or shuffling his feet to music in a cafe, and had obtained the consent of the manager to be there. As to disorderly conduct, the city only contended that petitioner was "argumentative" when arrested for loitering. This Court reversed the convictions, stating that:

> "Decision of this question turns not on the sufficiency of the evidence, but on whether this conviction rests upon any evidence at all." *Thompson* v. *Louisville, supra,* at p. 199.

In *Garner* v. *Louisiana, supra,* the Court scrutinized the record in a conviction for breach of peace arising

from a sit-in, and reversed the conviction on the grounds that uncontradicted evidence showed that petitioners' conduct was not outwardly boisterous, and that there was no evidence showing that their peaceful conduct might give rise to a disturbance. These two cases merely hold that state action without any evidentiary basis whatsoever may be a denial of due process of law.

In *Schware* v. *Board of Bar Examiners,* 353 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957), petitioner was refused admittance to the bar in New Mexico for lack of good moral character. Schware presented ample evidence as to his good character. The State Board refused to admit him because, during the 1930's, he had used aliases, had been arrested, and had been a member of the Communist Party. The Court found that these facts, occurring fifteen years or more prior to his application to practice law, and being rebutted by his subsequent conduct, could not give rise to an inference of lack of good moral character. The Court held that:

> "There is no evidence in the record which rationally justifies a finding that Schware was morally unfit to practice law." *Schware* v. *Board of Bar Examiners, supra,* at p. 246, 247.

In *Konigsberg* v. *State Bar of California, supra,* the Court held that the evidence did not rationally support the finding that petitioner had failed to prove good moral character and that he did not advocate overthrow of the government. In both of these cases, the events relied upon by the state had taken place in the distant past. In both cases, the basic facts were not in dispute. And, in both cases, each applicant introduced more recent evidence bearing directly on the issues. The court

only held that there was no rational justification, in light of all the circumstances, for the drawing of inferences that the applicants did not possess good moral character.

In the case at bar, Mr. Bond's statements obviously constitute some evidence as to his ability to uphold and support the United States Constitution and valid laws enacted pursuant thereto. His statements constitute direct evidence, and thus are not affected by the *Thompson* v. *Louisville* doctrine. *Cox*. v. *Louisiana,* 379 U.S. 559, 567, 85 S. Ct. 476, 13 L. Ed. 2d 487 (1964). The Selective Service Act, 50 USC § 451, et seq., is a valid statute enacted pursuant to Art. I, Sec. 8, Cl. 12 of the United States Constitution. See *Gara* v. *United States,* 178 F. 2d 38 (6th Cir. 1949), aff'd. 340 U.S. 857, 71 S. Ct. 87, 95 L. Ed. 628 (1950).

The statements either endorsed by the plaintiff or made by him have been set forth at length in this brief, and are contained in their entirety in the record. Can this Court say that those statements do not furnish rational support for the determination that the plaintiff was not qualified to take the oath of office?[7]

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[7]The present leader of the Student Non Violent Coordinating Committee has apparently interpreted his organization's position to be stronger than counsel for Appellants admit. Mr. Stokely Carmichael has urged Negroes to refuse to serve in the U. S. armed forces. He stated:

> "Any black man who fights in this country's Army is a black mercenary," Carmichael told about 600 persons attending a rally of the Congress of Racial Equality Friday night.
>
> "When Johnson calls, let's band together and say, 'Hell no, I'm not going'."

Carmichael also gave these definitions of black power:

An examination of the statements issued by the Student Non Violent Coordinating Committee or of the endorsement by Mr. Bond understates the turbulent reality of the issue in question. Public Law 88-408, a resolution affirming President Johnson's action with respect to the conflict in Viet Nam, was passed by the Eighty-eighth session of Congress. During the early part of 1966 there were approximately 197,300 men of the U. S. Military Forces stationed in South Viet Nam; 70,000 members of the Seventh Fleet Task Force were on duty in Southeast Asia. The U. S. Congress for 1965 had appropriated one billion seven hundred million dollars for this conflict and there was pending at that time an appropriation bill of 12 billion 700 million dollars to continue the struggle in Viet Nam. (R. 185.)

The statement made by the Student Non Violent Coordinating Committee was a vicious attack on this commitment. Mr. Bond did more than endorse the attack. Mr. Bond stated that he was "eager and anxious to encourage people not to participate in it (the war in Viet Nam) for any reason that they choose . . ." (R. 111.)

"When you talk of black power, you talk of building a movement that will smash everything Western civilization has created.

"When you talk of black power, you talk of bringing this country to its knees.

"When you talk of black power, you talk of picking up where Malcolm X left off.

"When you talk of black power, you talk of the black man doing whatever is necessary to get what he needs . . . we are fighting for our lives."

Cleaveland, August 6, 1966 (UPI) *The Atlanta Journal and Constitution,* Sunday, August 7, 1966.

He stated that ". . . the fact that the United States Government fights a war in Viet Nam, I don't think that I as a second class citizen of the United States have a requirement to support that war." (R. 112.) He stated that if his comments were treasonable he didn't know if he could stand by them. (R. 113.)

Mr. Bond's statements probably constitute a violation of 50 U.S.C. § 462, but even if they do not, they certainly bear upon Mr. Bond's ability to uphold and support the Constitution. It is true that there was evidence of a general nature relating to his good character at the hearing. And, he has stated that he does not advocate the violation of laws. But, he never refuted nor explained his statements previously made. Here, unlike in the first *Konigsberg* case, there is no direct evidence in his favor bearing on the issue of his qualifications. The House did not draw unfavorable inferences from the evidence; there was evidence which showed the members that Mr. Bond was not qualified to take the oath of office. In *Cox* v. *Louisiana, supra,* at 567, the Court held that the State of Louisiana had the right to infer criminal intent from circumstantial evidence. In this case, could not the Georgia House of Representatives simply give the greater credence to the direct evidence from the plaintiff's own lips, and determine that he was not qualified? Cannot the Georgia House interpret the position of the Student Non Violent Coordinating Committee endorsed by Mr. Bond as the leader of that organization, Mr. Stokely Carmichael, interprets it?

It may be that Mr. Bond is qualified for office. Perhaps the House should have disregarded his more extreme statements and seated him. But, the Constitutional standards have been met. There was some evidence, rela-

tive to his qualifications, constituting a rational basis for the action of the House. It is not the function of this Court to substitute its judgment for that of the House. As the Supreme Court stated in *Re Anastaplo,* 366 U.S. 82, 97, 81 S. Ct. 978, 6 L. Ed. 2d 135 (1961):

> "We conclude with observing that our function here is solely one of constitutional adjudication, not to pass judgment on what has been done as if we were another state court of review, still less to express any view upon the wisdom of the State's action."

V. Judicial Acts of a Legislative Body, Specifically Authorized As to Member Qualifications, Cannot Be a Legislative Bill of Attainder or an Ex Post Facto Law.

It seems self-evident that the action of the Georgia House of Representatives, resulting in a House Resolution, No. 19, cannot possibly be a Bill of Attainder or ex post facto law. Whatever its character, and whatever the merits or demerits of the action of the House, the resulting legislative act does not fit into either of those categories. Any such construction would void provisions in both the United States Constitution and most, if not all, state constitutions.

Article I, Section 2, Clause 5, of the Constitution of the United States vests in the House of Representatives the power of impeachment. Article I, Section III, Clause 6, of the United States Constitution vests in the Senate sole power to try all impeachments. Finally, Article I, Section 3, Clause 7, of the United States Constitution provides that judgments in cases of impeachment shall not extend beyond removal from office and disqualification to hold and enjoy offices under the United States. An impeachment, like an adjudication on qualifications, is an act by a legislative body sitting in a judicial character. This was made clear in *Barry* v. *United States,* 279 U.S. 597, 49 S. Ct. 452, 73 L. Ed. 867 (1929):

> "Generally, the Senate is a legislative body, exercising in connection with the House only the power to make laws. But it has had conferred upon it by the Constitution certain powers, which are not legislative, but judicial, in character. Among these is the power to judge of the elections, returns, and quali-

fications of its own members." *Barry* v. *United States, supra,* at p. 613.

The Constitution of the United States, in Article I, Section 9, Clause 3, prohibits Congress from passing Bills of Attainder or ex post facto laws. The construction of the Bill of Attainder clause sought by the Appellants in this case would automatically nullify the above-cited provisions dealing with impeachments, as the Act resulting from an impeachment would be, under their definition, a Bill of Attainder and ex post facto law.

The Georgia House of Representatives is given the power under the Georgia Constitution to judge the qualifications of its members. Article III, Section VII, Para. 1, of the Georgia Constitution. The State Constitution thus, in this instance, specifically allows the legislative body to sit in a judicial capacity. As has been pointed out before, the Constitution of the United States also authorizes the United States House of Representatives to sit as the tribunal to judge the qualifications of its members. In *United States* v. *Brown,* 381 U.S. 437, 446, 85 S. Ct. 1707, 14 L. Ed. 2d 484 (1965), this Court held that:

> "By banning bills of attainder, the Framers of the Constitution sought to guard against such dangers by limiting legislatures to the task of rule-making."

In the context of the *Brown* case, the Court's holding was eminently sound. But in the case at bar, the legislature has been given the specific power to sit as a judicial body. Therefore, the analysis of Attainder and ex post facto in *Brown* is simply not applicable to this case.

Furthermore, the refusal to seat Mr. Bond is not "punishment" within the meaning of either the Bill of

Attainder or ex post facto prohibitions. Historically, ex post facto laws were defined as the laws which made an act criminal after its commitment, or which changed the status of a party to his disadvantage. *Lindsey* v. *Washington,* 301 U.S. 397, 57 S. Ct. 797, 81 L. Ed. 1182 (1937). Mr. Bond was not punished for past or present activities. He was not challenged for his statements on January 6, 1966, or for any other statements. He was challenged on the grounds that on January 10, 1966, he did not possess the requisite qualifications for office demanded by both the United States Constitution and the Constitution of Georgia. He was refused a seat for a present lack of qualifications.

In *United States* v. *Brown, supra,* an act of Congress prohibited members of the Communist Party from holding union offices. In that case, the act was a Bill of Attainder in that it, in itself, adjudicated the guilt of, and visited punishment upon, a specified group. Under the Constitution of the United States, Archie Brown had a right not to be deprived of union office for the reasons enumerated in the act of Congress. As pointed out in *Snowden* v. *Hughes, supra,* there is no substantive right under the Fourteenth Amendment to public office. Therefore, deprivation of public office cannot be "punishment" as contemplated by the Bill of Attainder clause.

The theory that the constitutionally authorized action of a legislative body in determining the qualifications of its members can constitute a Bill of Attainder is novel indeed. Bills of Attainder are discussed extensively in 63 Yale L.J. 844, Note: *"The Constitutional Prohibition of Bills of Attainder: A Waning Guaranty of Judicial Trial."* Footnote 32 of that article points out that in

some areas, such as that of expelling members for lack of qualifications, a legislature has "unquestionable" authority. Conceivably a determination of qualifications could deprive a member of federally protected rights, such as procedural due process of law. As previously indicated, it could not seriously be maintained that a state legislature could determine that a member-elect was not qualified because he was a Negro. That would violate the Fourteenth Amendment of the Constitution of the United States. But, even in that unlikely case, it could not be maintained that the result of the procedure itself was a Bill of Attainder or ex post facto law. In that instance, the ground of disqualification itself would be invalid, and would violate the Constitution of the United States.

The Appellant's contention that the legislative act of the Georgia House constituted either a Bill of Attainder or ex post facto law is frivolous, and not worthy of this Court's attention. As Congress itself is given the power in the United States Constitution to determine the qualifications of its members, it seems clear that a resolution containing the result of such a determination of qualifications by Congress could not be a Bill of Attainder or ex post facto law, which the Congress has no power to enact. And, the result of the determination authorized by the provision of the Georgia Constitution, identical to that of the United States Constitution, simply is not a Bill of Attainder or ex post facto law.

VI. An Adjudication with Respect to the Constitutional Qualification of a Person Elected to a Legislative Body Does Not Deprive the Electorate of Their Vote or Deny Them a Republican Form of Government.

One of the many spurious issues in this case should be laid to rest, at this time, for the benefit of all concerned. Mr. Bond was not denied a seat in the Georgia House of Representatives because of his race. At every stage of this litigation. Appellants have sought to imply an issue of racial discrimination, without meeting the issue on the facts. It is as if they seek to sway the decision of this Court by mental suggestion.

There simply is no "racial background of the current dispute" for this Court to consider. To infer such a "realistic" approach would be to declare, as a principle of law, that every case involving members of more than one race has a racial background. To charge that Georgia has in the past discriminated against Negroes, and then to infer that the charge is somewhat relevant to the issues in this case is not legitimate legal technique.

The Court below did not dismiss this charge merely for lack of direct evidence, but rather held that:

> "The contention that Mr. Bond was denied his seat because of his race was resolved adversely to him from the bench during the hearing of this matter. To support this contention it was urged that Mr. Bond was a Negro; that SNCC was a militant civil rights organization; and that the question of race was inextricably related to each and every statement forming the basis of the challenge. This logic would create license in the name of race. Fur-

thermore, seven Negroes, as stated, were seated on the same day as representatives. Two served on the special challenge committee at the request of Mr. Bond; two Negro senators appeared before the committee as character witnesses for him; and two of the Negro representatives spoke on the floor of the House for him before the final vote. *The charge of racial discrimination and thus of denial of equal protection of law is without foundation in fact."* (Emphasis added.) (R. 141.)

The only legitimate issues in this area are resolved against the Appellants.

Mr. Julian Bond, one of the Appellants in this case was refused his seat as a member of the Georgia House of Representatives after having been duly elected by the voters of House District 136 for the session of the General Assembly commencing January 10, 1966.

Dr. Martin Luther King and Mrs. Arel Keyes, the other Appellants, seeking to represent the citizens and voters of House District 136 as a class, allege a denial of their constitutional rights to vote and to a republican form of government.

Dr. King and Mrs. Keyes are residents of the District but Dr. King is not registered to vote in District 136. He is registered to vote in another District.

Neither Appellant Dr. King nor Mrs. Keyes, nor the alleged class which they represent, have any standing in this case to raise constitutional provisions alleged to be violated by the failure of the Georgia House of Representatives to seat Mr. Julian Bond.

This Court has held in numerous decisions that in

order to challenge the constitutionality of a statute a party plaintiff must show some immediate direct injury. *Liverpool, N. Y. and P. Steamship Company* v. *Comm. of Emigration,* 113 U.S. 33, 5 S. Ct. 352, 28 L. Ed. 899 (1885).

This Court stated in the case of *Commonwealth of Massachusetts* v. *Mellon,* 262 U.S. 447, 488; 43 S. Ct. 597, 601; 67 L. Ed. 1078 (1923):

> "The party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."

The question of standing was discussed in *Baker* v. *Carr,* 369 U.S. 186, 204; 82 S. Ct. 691, 703; 7 L. Ed. 2d 663 (1962), where the Court said:

> "Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing."

The qualified voters of the 136th House District have not been deprived of their right of representation in the Georgia House of Representatives. Georgia Code Section 34-805 provides that the Governor must call a special election to fill a vacancy within ten days of such vacancy. A temporary lack of representation does not deprive the voters in a district of their constitutional right of representation. In the case of *Barry* v. *United States,* 279 U.S.

597, 616; 49 S. Ct. 452, 456 (1929), the Court held:

> "The temporary deprivation of equal representation which results from the refusal of the Senate to seat a member pending inquiry as to his election or qualifications is the necessary consequence of the exercise of a constitutional power, and no more deprives the state of its 'equal suffrage' in the constitutional sense than would a vote of the Senate vacating the seat of a sitting member or a vote of expulsion."

Even if the adjudication by the House of Representatives had been improper, which is specifically denied, Appellants Dr. King and Mrs. Keyes and the class which they allegedly represent have not been deprived of any constitutional rights. A party must show, in order to have standing to attack the validity of a statute, some direct injury to himself. *McGowen* v. *Maryland,* 366 U.S. 420, 429; 81 S. Ct. 1101; 6 L. Ed. 2d 393 (1961). And, cases have held that persons can only assert the rights of others when it would be difficult for those others to maintain a suit. *Heilberg* v. *Fixa,* 236 F. Supp. 405 (1964-Calif.); *Barrers* v. *Jackson,* 346 U.S. 249, 255, 256, 257; 73 S. Ct. 1031; 97 L. Ed. 1586 (1953). In this case, the only party who could possibly have standing to question the action of the Georgia House of Representatives is Mr. Julian Bond.

The reapportionment cases have held that voters have standing in constitutional cases in some certain and specific instances. *Baker* v. *Carr, supra,* held that voters in Tennessee had standing to attack malapportionment imposed by State legislators. The Court held in *Baker* v. *Carr* that voters who alleged facts showing disadvantages to themselves as individuals had standing to sue. A mal-

apportioned representative body places those voters on an unequal footing, vis-a-vis, other voters in the State. *Gray* v. *Sanders,* 372 U.S. 368; 83 S. Ct. 801; 9 L. Ed. 2d 821, held that any person whose right to vote was impaired by the conduct of elections had standing to sue.

In this case, the rights of Appellants Dr. King and Mrs. Keyes have not been violated. It is clear since *Toombs* v. *Fortson,* 241 F. Supp. 65 (N.D. Ga. 1964), that these voters were not placed on an unequal footing with other voters. After the qualified voters in the district exercised their right to vote and after their votes were counted and totally unconnected with that exercise, the House of Representatives refused to seat Mr. Bond on the ground that he was not then properly qualified to hold the office. This action in no way affected the right of Appellants Dr. King and Mrs. Keyes to vote. These Appellants cannot maintain that their constitutional rights have been violated merely because the person elected is not seated in the General Assembly of Georgia.

Article I, Section 3, Paragraph 3, of the Constitution of the United States provides that no person shall be a United States Senator who shall not have attained the age of thirty years. Can it be said that a citizen-voter has been denied representation or has had his vote impaired or denied, or has been denied a republican form of government because his vote was cast for a candidate who was not qualified because of age? The United States Senate would be required to deny a seat to an underage Senator-elect. The case with respect to Mr. Bond is of the same character.

Neither Dr. King nor Mrs. Keyes alleged that the election machinery available in Georgia to fill vacancies was

inadequate to restore representation. If, after an election, an elected representative had legally been declared to be underage, he would not be entitled to take his seat. It would be ridiculous to maintain that constitutional voting rights would be violated by such an adjudication of lack of constitutional qualification.

As for Dr. King, it has been held that only a citizen who is a legal voter in a district where his rights are impinged would have standing to bring suit. *League of Nebraska Municipalities* v. *Marsh,* 209 F. Supp. 189 (1962). Dr. King was not legally qualified to vote in the election in question. (R. 120.) The fact that Dr. King has strong personal beliefs and convictions with respect to the issues before the Court or that he earned and received a Nobel Peace Prize will not give him standing as a party plaintiff. There are no facts alleged in the complaint that give Appellant Dr. King standing either individually or as the representative of a class.

CONCLUSION

The decision of the Court below should be affirmed or in the alternative, the case should be dismissed for lack of a justiciable issue.

The purpose of the Constitutional provisions and principles involved in the case at bar is to insure the right of the people to self-government. This concept of self-government is the unique feature of our political system. The function of the courts should be to support and uphold this concept.

Our Constitution creates a fundamental distinction between the people and their political servants. The citizens have the right and the duty to speak freely on public issues, and to criticize those entrusted with public duty. The representatives of the people, including state legislators, are required to support the fundamental law which provides for self-government.

The people must have the power and authority to take proper measures safeguarding the public service from disloyal conduct, else their liberties cannot long endure.

Respectfully submitted,

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